

Before the  
Federal Communications Commission  
Washington D.C. 20554

In the Matter of	)	
	)	
Appropriate Framework for Broadband Access	)	CC Dockets No. 02-33; 95-20,
To the Internet Over Wireline Facilities	)	98-10
	)	
	)	

COMMENTS OF THE AMERICAN FOUNDATION FOR THE BLIND

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## SUMMARY

As the Commission defines its regulatory framework for high speed access to the Internet, it needs to ensure that all Americans, including Americans with disabilities, can effectively access broadband service. The Internet has already become a vital source of information for virtually all jobs, educational programs, and the fulfillment of our civic duties. For individuals who are blind and visually impaired, accessing information via the Web is not merely an option; often it is the *only* means of obtaining basic information. Because dependence on Internet communications for access to information is so much greater for blind individuals than it is for sighted persons, the need for a swift, “always-on” broadband Internet connection is indispensable for this population of users.

Significant barriers to broadband services already exist for individuals who are blind or visually impaired. For example, electronic services that have graphical-only interfaces and mouse-driven commands that do not have keyboard equivalents can pose substantial access barriers. Commission action is needed to require readily achievable solutions to make these and other broadband service features accessible.

In determining what is covered under Section 255, the Commission should consider the functionality of the broadband services in question. IP telephony and e-mail services are two applications of wireline broadband Internet access service in which communication takes place transparently between end users, without a change in form or content. Given the fact that each truly reflects the way in which we now communicate “telephonically,” and the fact that the underlying wireline transmissions of each are

telecommunications transmissions, both of these broadband applications should be covered by Section 255 of the Communications Act.

Our nation's communications methods are swiftly shifting from legacy telephone services to high speed advanced telecommunications over broadband networks. Failure to bring these latter services within the scope of Section 255 will result in persons with disabilities losing access to the very telecommunications functions to which they once had access under traditional platforms. This could create dire consequences for those of us with vision disabilities that are seeking to join the rest of the nation in the move to advanced communications technologies.

The Commission can and should exercise its ancillary jurisdiction under Title I of the Act to require disability access to wireline broadband Internet access services. Establishing accessibility safeguards under Title I will further both the Commission's and Congress's overall objectives to make communications services available and accessible to all Americans, including Americans with disabilities.

The Commission, in prior proceedings, has acknowledged that market forces alone are not typically sufficient to protect the interests of Americans with disabilities. Consistently, both Congress and the Commission have stepped in with laws and regulations designed to ensure access by people with disabilities where competitive forces have failed. AFB urges the Commission to again take action to ensure such access as the Commission sets the stage for its future broadband regulatory policies.

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COMMENTS OF THE AMERICAN FOUNDATION FOR THE BLIND

I. Introduction

The American Foundation for the Blind (AFB) is a leading national resource for people who are blind or visually impaired, the organizations that serve them, and the general public. The mission of AFB is to enable people who are blind or visually impaired to achieve equality of access and opportunity that will ensure freedom of choice in their lives.

AFB submits these comments in response to the above captioned Federal Communications Commission's (FCC's) Notice of Proposed Rulemaking (NPRM) which seeks input on how to classify broadband services that are provided through the domestic telephone wireline infrastructure.<sup>1</sup> AFB urges that as the Commission determines the appropriate regulatory framework to oversee high speed access to the Internet, it ensure that the legal, regulatory and policy implications of that framework take into consideration the need to ensure access to high speed services by individuals with disabilities.

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<sup>1</sup> *In the Matter of Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities, Notice of Proposed Rulemaking*, CC Dkts 02-33; 95-20; 98-10, FCC 02-42 (rel. Feb. 15, 2002).

## II. Broadband Access is Becoming Critically Important to Leading an Independent Life

Access to broadband services is coming to play an increasingly important role in the daily affairs of all Americans. For individuals who are blind and visually impaired, broadband service is becoming far more than just a luxury; it is quickly becoming the only means by which we have regular access to basic communication and information. For most, the Web offers just one option with which to acquire information; sighted individuals can acquire information through the printed word via faxes, snail mail, and other means. In contrast, the Web is often the only means of providing access to basic information for blind and visually impaired people. This access is critical if people with vision disabilities are to compete on an equal basis for employment opportunities, benefit from educational programs, make sound financial and medical decisions, fulfill civic duties, and actively contribute to society as productive participants. Through reading services, talking books, and accessible software and web applications, the Internet makes the delivery of various types of information, previously available in print formats only, readily accessible to blind users. For blind and visually impaired school children, digital talking books, soon to be widely available on Internet servers, provide access to educational materials once only available to their nondisabled peers. Moreover, the future of electronic communications holds even greater promise. The simultaneous integration of text and audio, with the capability for Braille and large print, will soon enhance access to informational materials to an even greater extent for both children and adults who are blind or visually impaired.

Reliance on the Internet as an information source is exemplified by the vast number of Americans now visiting government agency web sites. According to a Report

issued by Pew Internet and American Life in April of this year, as many as sixty-eight million Americans have now visited government agency web sites, up from forty million only two years ago. The Pew Report concludes that Americans are utilizing these sites to fulfill their civic, personal, and professional duties. Referring to the new “e-citizenship,” the Report reveals that people are using the sites to apply for governmental benefits, send comments to public officials, acquire information for deciding how to cast their votes, and complete basic transactions, including the filing of taxes. A new law, Section 508 of the Rehabilitation Act, requires these and other types of federal governmental information provided over the Internet to be accessible to people with disabilities.<sup>2</sup> But the benefits of this new legislation will only be fully realized if its intended beneficiaries are able to access this information in a manner that meets their needs.

In order to fully benefit from electronic applications and services, persons who are blind or visually impaired need prompt and easy access to these communications. Although materials over the Internet are available through dial-up services, the cumbersome nature of these services can discourage their regular use. In its parallel proceeding on broadband access to the Internet over cable facilities, the Commission recently recognized the importance of being able to “utilize [the] more sophisticated ‘real time’ applications” that faster Internet transmissions have to offer.<sup>3</sup> Moreover, a recent survey conducted by Jupiter Media Matrix found that the vast majority of respondents said that it is the “always on” connection, rather than the ability to view high quality

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<sup>2</sup> 29 U.S.C. §794(d).

<sup>3</sup> *In the Matter of Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities; Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities, Declaratory Ruling and Notice of Proposed Rulemaking*, GN Dkt. No. 00-185, CS Docket No. 02-52 (rel. Mar 15, 2002) (*Cable Modem Service Ruling*) at ¶10. The Commission noted that in addition to significantly reducing delay associated with dial-up services, broadband services

video content, that is motivating people to purchase broadband services.<sup>4</sup> Because dependence on Internet communications for access to basic materials is so much greater for blind individuals than it is for sighted persons, the need for a swift, “always-on” Internet connection is correspondingly greater for this population of users. Indeed, it is the persistence of the broadband connection that creates the most compelling need for access by blind and visually impaired persons. Unfortunately, without Commission protections, history shows that this very population – along with other individuals with disabilities – may be among those most excluded from the deployment of these advanced services.

In its *Second Report* on the deployment of advanced services, the Commission acknowledged that individuals with disabilities can benefit from advanced services “perhaps more than any other group of Americans.”<sup>5</sup> At the same time, the Commission raised concerns that market forces alone may not guarantee timely access to advanced telecommunications capability for certain categories of Americans, including Americans with disabilities. Citing the “[l]ack of computer ownership and training, lack of accessible content and equipment, low incomes among people with disabilities and the cost of adaptive equipment,” the Commission stated that there is “no doubt” that individuals with disabilities do not have as much access to advanced services as do able-bodied persons,<sup>6</sup> and concluded that “there is a risk that networks and services will be developed that are not accessible to people with disabilities.”<sup>7</sup>

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facilitate access to streaming video on a larger portion of the screen, a feature that is particularly beneficial for low vision users.

<sup>4</sup> Jupiter Media Matrix Survey, Reuters, April 22, 2002

<sup>5</sup> *Deployment of Advanced Telecommunications Capability to all Americans in a Reasonable and Timely Fashion, Second Report*, CC Dkt. No. 98-146, 15 FCC Rcd 20913 (2000) (*Second Report*) at ¶234.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at ¶236.

In its *Third Report* on the deployment of advanced services, the Commission reiterated its concerns that “persons with disabilit[ies] could face significant impediments to their ability to access [ ] advanced services.”<sup>8</sup> Again, the Commission cited several relevant factors that could result in impeded access: “low rates of computer ownership among people with disabilities; prohibitive costs for computers and Internet access services; the lack of adaptive hardware, software, and Internet content; and lack of training.”<sup>9</sup> In both the *Second* and *Third Reports*, the Commission stated its intention to continue to monitor deployment of advanced services to persons with disabilities, in order to determine whether regulatory action is warranted to ensure access to these persons.<sup>10</sup> AFB submits that such regulatory action is warranted now.

### III. Significant Barriers to Broadband Access Services are Impeding Usage by Individuals with Vision Disabilities

The Commission acknowledged, in its *Third Report*, that the development of adaptive technologies that can assist individuals in accessing the Internet “appears to be on a limited basis.”<sup>11</sup> In fact, significant barriers to advanced Internet services do exist for individuals who are blind or visually impaired. E-mail, web pages, and electronic services that have visual-only interfaces or graphical on-screen menus are too frequently unusable by people who have vision disabilities. When interfaces are not accompanied by text labels, they cannot be “read” by screen access software. Additionally, developers frequently fail to provide keyboard equivalents for mouse-driven commands, including

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<sup>8</sup> *Deployment of Advanced Telecommunications Capability to all Americans in a Reasonable and Timely Fashion*, CC Dkt. No. 98-146, Third Report, FCC 02-33 (2002) (Third Report) at ¶103.

<sup>9</sup> *Id.*

<sup>10</sup> Second Report at ¶8; Third Report at ¶103. In the Second Report, the Commission indicated its intent to monitor new types of equipment networks so that its accessibility rules “remain current with emergency technologies and do not simply react to them.” Second Report at ¶267.

<sup>11</sup> Third Report at ¶104.

buttons, scroll windows, text entry fields, and pop-up windows.

With respect to this proceeding, a comparison between conventional wireline telephone service and broadband wireline Internet access service shows that the access barriers to broadband service are significant. Although, as discussed below, the end result of both of these services is similar, if not identical – i.e., the transmission of unaltered messages – gaining access to each of these forms of communication can be considerably different.

To establish wireline telephone communications, all one needs to do is to purchase a telephone, hook it up, and initiate telephone service. Protections are available under Section 255, in the event that any part of this process presents accessibility or usability issues. In contrast, there are several steps that must be taken to obtain high speed Internet access, many of which have already been known to present significant accessibility barriers. First, in order to obtain broadband service, a potential customer typically must fill out forms, to ascertain geographical eligibility. When these forms are available in a print-only format or in electronic forms that are not readable with commonly used assistive technology, they are not accessible to potential users. Once eligibility is determined, the simple step of placing an order for service can present access barriers if the only means of placing that order is by filling out print materials or by interacting with inaccessible electronic forms. The next step – installing the broadband access ‘kit’ to establish the gateway – can be achieved without much difficulty, but only if the instructions and controls to secure access to the broadband gateway are available in accessible formats. Software installation often requires working through interactive menu systems, e-mail, and other telecommunications services. Alternatives to graphic

controls or bitmapped text are needed for blind users to properly make the installations. Finally, once the connection is made, individuals with vision disabilities need accessible ways to interface with the services with which they have achieved a connection. The same lack of access to the controls that enable someone to get online can also prevent that person from using the broadband services provided through broadband spectrum.<sup>12</sup> Methods of providing input, of reading screens, and of learning about service and product changes and offerings must all be accessible for users to fully benefit from the broadband access service.

Section 255 requires access to telecommunications services where such access is readily achievable. Some providers of wireline Internet broadband access service have already shown that the provision of accessible text and interfaces, as well as audio output for e-mail, web pages and other Internet services is, in fact, readily achievable. Notwithstanding the fact that these accessibility features can be provided without much difficulty or expense, not all providers have made their services accessible to people with vision disabilities. The requirement to make broadband access services accessible should be mandated by the Commission; this should not be a decision that is left up to the whim of each wireline broadband Internet access service provider.

It is widely predicted that as digital technologies through broadband become ubiquitous, plain old telephone service (POTS), now fully accessible to blind users, will likely merge with IP telephony. As these services converge, so too will the equipment used to access these services. The advantages of having access to both telephony and

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<sup>12</sup> For example, being able to select among movies or other purchases requires an accessible means of knowing what is being offered, as well as the ability to choose among those offerings. Similarly, ordering items requires an accessible means of specifying credit numbers and expiration dates.

broadband services through a single piece of equipment are enticing to residential and business customers who would prefer a single connection for data, text, video and voice connections. Unfortunately, many of the products now used to access IP telephony have controls that are not accessible to blind users. For example, blind consumers have no way of knowing on which line a call is coming, ways to program equipment, ways to set up conference or three-way calling, or ways to determine which calls are on hold. As our nation moves to increased reliance upon Internet communications for even basic telephone conversations, the future for blind consumers looks sullen; without regulatory protections for access to broadband equipment and service gateways, we, the blind community, run the risk of being left behind. As the Internet and web-based services become replacements for today's telecommunications services and equipment, and as reliance upon these communications services becomes the principal means – if not the *only* means – of accessing certain types of information, the Commission needs to fulfill its obligation to make sure that these communications services are designed to be accessible to all Americans.

IV. IP Telephony and E-Mail Communications are Broadband Services that are Functionally Similar to Services Traditionally Categorized as Telecommunications Services and Should Retain their Telecommunications Services Classification under Title II.

In the instant proceeding, the Commission tentatively concludes that wireline broadband Internet access service is an information service because it provides the capability for “generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.” In contrast, the Commission notes that “telecommunications” occurs where there is a transmission of information that takes place transparently between end users, without any change in the

form or content of that information. AFB submits that there are, in fact, at least two applications of wireline broadband Internet access service that take place transparently between end users without a change in form or content, and that such applications should be classified as telecommunications services – even if there are other applications of this service that acquire an information service classification.

Specifically, IP telephony entails the carriage of telephone conversations over the Internet which, for end users is identical to the carriage of conversations over the public switched telephone network or over wireless telephone service networks. As such, IP telephony is plainly a service that provides a transparent transmission path, “of the user’s choosing, without change in form or content of the information as sent and received,” defined as ‘telecommunications’ by the Communications Act.<sup>13</sup> When provided to the public for a fee, such offering is a telecommunications service, and should be treated as such under Section 255.<sup>14</sup>

Similarly, e-mail communications simply entail the transport of messages between and among users without a change in the content of those messages. Functionally, e-mail is no different than POTS, and is, in fact, gradually taking the place of simple telephone calls.<sup>15</sup> A user wishing to send an e-mail message performs the functional equivalent of dialing a number on a telephone keypad, i.e., he or she taps an e-mail address on a computer keyboard and transmits information without changing the form or content of that information. When e-mail messages are routed via Internet

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<sup>13</sup> 47 U.S.C. §153(43).

<sup>14</sup> 47 U.S.C. §153(46). Section 255 requires all telecommunications services providers and manufacturers to make their offerings accessible to people with disabilities, where readily achievable. 47 U.S.C. §255.

<sup>15</sup> In its Section 255 proceeding, the Commission itself suggested that e-mail can offer an alternative to telephone service for the purpose of receiving information. Section 255 Report and Order at ¶107.

service providers, two protocols – the Transfer Control Protocol (TCP) and the Internet Protocol (IP) – break that information into “packets” of digital information. The service provider’s network then routes the information to the e-mail’s recipient via the most appropriate path. Although each packet may travel down a different path, upon arrival, the information received is the same as when it was sent; i.e., the information transmitted is not modified in any way. Given the functionalities of both IP telephony and e-mail, and the fact that both their underlying wireline transmissions, as well as their end products are telecommunications services, both of these broadband applications should be subject to Section 255 of the Communications Act.

In both this and its *Cable Modem Service Ruling*, the Commission states that the classification of a modem service should “focus[] on the nature of the service provided to consumers, rather than . . . on the technical attributes of the underlying architecture.”<sup>16</sup> At the same time, the Commission asks whether there is anything about wireline broadband Internet access service such that the service can be classified as two separate services, both an information service and a telecommunications service.<sup>17</sup> For the reasons noted above, AFB submits that, for the purposes of coverage under Section 255, the Commission should in fact define categories of high speed wireline Internet access service according to the “nature of the service” provided to the end users. Where, as in IP telephony and e-mail, the service is carried over a direct pipeline and provides a service that is functionally equivalent to telephone service, its classification should, without question, be a telecommunications service within the scope of Section 255.

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<sup>16</sup> NPRM at ¶7; Cable Modem Service Ruling and NPRM at ¶38.

<sup>17</sup> NPRM at ¶27.

The Commission adopted a similarly functional approach in its rules governing Section 255. In its Section 255 Order, the Commission concluded that an entity that provides both telecommunications and non-telecommunications services is subject to Section 255 “to the extent that it provides a telecommunications service.”<sup>18</sup> Additionally, it ruled that telecommunications equipment and customer premises equipment which is “integral to the operation of the telecommunications functions of CPE” is equipment within the meaning of Section 255.<sup>19</sup> The Commission made a point of stating that it would cover such equipment to the extent that it is “used to originate, route or terminate telecommunications” . . . *even if the equipment is capable of providing non-telecommunications functions.*<sup>20</sup>

If the Commission decides not to adopt this approach, the consequences for people with disabilities will be severe. Our nation’s communications methods are gradually shifting from legacy telephone services to high speed advanced telecommunications over broadband networks. The Commission itself notes that broadband service may ultimately replace telephone service now provided over legacy narrowband networks.<sup>21</sup> As this occurs, individuals with disabilities will lose access to the telecommunications functions to which they once had access under traditional platforms, simply because newer services which provide equivalent functions have added capabilities that go beyond traditional telecommunications services. This makes little sense; at least those functions of high speed Internet access service which are plainly

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<sup>18</sup> *In the Matter of Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996, Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities, Report and Order and Further Notice of Inquiry*, WT Dkt. No. 96-198, FCC 99-181 (re. Sept. 29, 1999) at ¶80.

<sup>19</sup> *Id.* at ¶85.

<sup>20</sup> *Id.* at ¶87.

<sup>21</sup> NPRM at ¶13.

telecommunications services should have mandates for accessibility under Section 255. Failure to bring these services within the scope of Section 255 will create a significant gap within the Commission's own regulatory framework for ensuring access to future communications technologies by persons with disabilities.

V. The Commission Should use its Authority under Title I to Extend Disability Protections to Broadband Access Service.

To the extent that the Commission concludes that the whole or any part of wireline broadband Internet access service is an information service, the Commission should exercise its jurisdiction under Title I of the Act to require access to this service by people with disabilities. The Commission's authority under Title I to issue rules that are designed to achieve the Commission's goals – even when those rules are not explicitly mandated by statute – is undisputed.<sup>22</sup>

The Commission states that its “primary policy” goal in this proceeding is “to encourage the ubiquitous availability of broadband to all Americans.”<sup>23</sup> This goal cannot be achieved *at the expense of* another Commission and Congressional objective, namely the goal of ensuring access to communications technologies by Americans with disabilities. Rather, it should be achieved *in conjunction with* the goal of ensuring disability access. Repeatedly both Congress and the Commission have acknowledged the critical role that access by people with disabilities has come to play in our nation's communications policies. Indeed, the insistence that people with disabilities not be left

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<sup>22</sup> NPRM at ¶39, citing Computer II Final Decision, 77 FCC 2d at 432 (1980), *aff'd*, *Computer and Commun. Indus. Ass'n v. FCC*, 693 F. 2d 198 (D.C. Cir. 1982), *cert denied*, 461 U.S. 938 (1983). In its *Cable Modem Services Ruling*, the Commission acknowledged that federal courts have “long recognized the Commission's authority to promulgate regulations to effectuate the goals and accompanying provisions of the Act in the absence of explicit authority.” *Cable Modem Service Ruling* at ¶75.

<sup>23</sup> Citing to “[C]ongressional policies underlying the Telecommunications Act of 1996,” the Commission emphasizes that its policies are intended “to ensure consumers have access to infrastructures that provide broadband capabilities.” NPRM at ¶3.

out of the communications revolution is precisely what culminated in the passage of Section 255. In its Section 255 Order, the Commission explained, “[u]nderstanding that communications is now an essential component of American life, Congress intended the 1996 Act to provide people with disabilities access to employment, independence, emergency services, education, and other opportunities.”<sup>24</sup> On the need to consider access in the design of communications technologies, the Section 255 Order quotes directly from the Senate Report:

The Committee hopes that [Section 255] will foster the design, development and inclusion of new features in communications technologies that permit more ready accessibility of communications technology by individuals with disabilities. The Committee also regards this new section as preparation for the future given that a growing number of Americans have disabilities.<sup>25</sup>

At the same time that the Commission has repeatedly acknowledged the *need for communications access* by people with disabilities, the agency has joined Congress in recognizing the longstanding *barriers to such access* by people with disabilities.<sup>26</sup> It was the very existence of these barriers that prompted the Commission to assert its ancillary jurisdiction over two information services – interactive menu services and voice mail – in its Section 255 proceeding. Explaining that it would not be able to “fully achieve” Congress’ objective to “meaningfully” carry out the accessibility requirements of Section 255 without applying the section to these information services,<sup>27</sup> the Commission extended its jurisdiction to interactive menu services and voice mail provided by carriers and non-carriers alike.<sup>28</sup> The Commission found that the mere use of the term

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<sup>24</sup> Section 255 Order at ¶4.

<sup>25</sup> *Id.* at ¶7, citing S. Rep. No. 104-23, 104<sup>th</sup> Cong., 1<sup>st</sup> Sess. 52 (1995).

<sup>26</sup> *Id.* at ¶1.

<sup>27</sup> *Id.* at ¶93.

<sup>28</sup> *Id.* at ¶98.

“telecommunications services” in Section 255 did not preclude coverage of anything other than telecommunications services.<sup>29</sup>

For support in asserting its ancillary jurisdiction in the Section 255 proceeding, the Commission turned to the decision of the U.S. Court of Appeals for the D.C. Circuit in the case of Mobile Communications Corp., a case which upheld the Commission’s decision to extend the licensee payment provisions of the 1996 Act to a category of licenses not explicitly required by the Act.<sup>30</sup> The Mobile court rejected an interpretation which would have narrowly limited the Commission’s authority, noting that ““a congressional prohibition of *particular conduct* may actually support the view that the administrative entity can exercise its authority to eliminate *a similar danger*.””<sup>31</sup> The Commission applied this reasoning in the Section 255 context. Since Congress had made clear its intent not to discriminate against people with disabilities in the development of new telecommunications services, the Commission found sufficient authority to “eliminate a similar danger,” i.e., the danger that people with disabilities would not be able to use certain information services. The Commission concluded that a failure to cover information services via its ancillary jurisdiction would undermine its implementation of Section 255 “against the backdrop of an expressed congressional policy favoring accessibility for persons with disabilities.”<sup>32</sup>

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<sup>29</sup> *Id.* at ¶104.

<sup>30</sup> *Id.* at ¶104; Mobile Communications Corp. of America v. FCC, 77 F. 3d 1399 (D.C. Cir. 1996), *cert denied* Mobile Telecommunication Technologies Corp. v. FCC, 519 U.S. 823 (1996) (Mobile).

<sup>31</sup> Mobile, 77 F. 3d at 1405 (emphasis added).

<sup>32</sup> Section 255 Order at ¶106. In its Section 255 proceeding, the Commission declined to extend the accessibility obligations to other information services because at the time it found that the information available via these services could also be retrieved through telecommunications services, by phone. As we have discussed above, in fact, electronic services may be the *only* way for blind and visually impaired persons to obtain certain types of essential information. Moreover, it may not be long before IP telephony completely takes the place of legacy telephone service.

Similarly, in the instant proceeding, failure to establish accessibility safeguards for wireline broadband Internet access service under Title I will undermine the Commission's overall objective in this and prior proceedings to make communications services available and accessible to all Americans, including Americans with disabilities. Without regulatory supervision of Internet access services, significant barriers will prevent individuals with disabilities from fully benefiting from the deployment of these services.

VI. Intermodel Competition will not Result in Access for People with Vision Disabilities.

Although the Commission readily acknowledges its jurisdiction over information services under Title I, it explains that it declined to use its authority to regulate these services in the past because the information services market exhibited "effective competition."<sup>33</sup> In this proceeding, the Commission now asks whether adequate competitive incentives in the broadband market exist to protect the interests of consumers absent governmental regulation.<sup>34</sup>

AFB submits that there are not sufficient incentives in the broadband marketplace to protect the interests of consumers with vision disabilities. It is an unfortunate fact, but one borne by our national experience, that without legislative or regulatory action, the needs of people with disabilities have gone largely ignored by the telecommunications and electronic information industries. The failure of these industries to respond to these needs consistently has resulted in the need for federal intervention – first with the

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<sup>33</sup> NPRM at 39, referring to its Computer II ruling. The Computer rulings referred to enhanced services, now identified as information services.

<sup>34</sup> *Id.* at ¶60.

Telecommunications for the Disabled Act of 1982,<sup>35</sup> later with the Americans with Disabilities Act of 1990,<sup>36</sup> and more recently with both Section 255 of the Communications Act and Section 508 of the Rehabilitation Act. Through these federal acts, Congress, together with the Commission, have stepped in where competitive forces within the market have failed to protect the interests of people with disabilities. Indeed, the very fact that Congress felt the need to impose new access requirements – through Section 255 – on an industry at a time when nearly all of its other actions were aimed at deregulating this industry, is perhaps the best illustration of the ongoing need for regulatory protections of disability interests. While intermodal competition for broadband customers may be increasing, it is once again highly unlikely that this competition will have the desirable effect of increasing access by people with disabilities to high speed Internet service. For this reason, we call upon the Commission to exercise its authority under Title I to require wireline broadband Internet access service providers to offer audible and other accessible alternatives in the use of their services.

## VII. Conclusion

The ability to access information through text-based Internet services, including e-mail, is already indispensable to modern day society. Reliance on electronic communications for work, school, recreation, and the fulfillment of civic responsibilities, which may soon include voting, magnify the need to ensure that, as digital technologies either merge with or take the place of legacy technologies, blind and visually impaired consumers continue to have access to today's and tomorrow's communications technologies. Artificial distinctions between information services and

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<sup>35</sup> 47 U.S.C. §610 (requiring hearing aid compatibility telephones).

<sup>36</sup> 42 U.S.C. §225 (requiring telecommunications relay services).

telecommunications services should not take the place of functional definitions that truly reflect the ways in which we now communicate. AFB urges that, in defining its regulatory framework for wireline broadband Internet access service, the Commission adopt a functional and practical approach that incorporates accessibility protections for people with disabilities under both Titles I and II of the Communications Act.

AFB appreciates the opportunity to submit these comments and trusts that the Commission will take action to ensure our ability to join the rest of the nation as new and innovate high speed technologies continue to change our communications landscape.

Respectfully submitted

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